



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

September 6, 1990

Mr. Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy
1033 LaPosada, Suite 340
Austin, Texas 78752-3892

LO-90-59

Dear Mr. Bradley:

You ask whether the Texas State Board of Public Accountancy may withhold the examination booklets from candidates for the Uniform CPA Examination. You state that traditionally the candidates' booklets were made available following each examination. Beginning with the November 1989 examination, your practice complied with the National Association of the State Boards of Accountancy's Examination Review Board, and Texas candidates were not allowed to personally remove their booklets from the exam site, but were permitted to affix postage to their booklets for mailing by the Board the day following the examination. The board now would like to make all examination questions unavailable to any person.

It appears that the board is using an examination provided by the National Association of State Boards of Accountancy, as authorized by section 15(a) of article 41a-1 V.T.C.S., the Public Accountancy Act of 1979. You do not state whether the board, in using the National Association exam, has also agreed to provide examination booklets to candidates in accordance with these guidelines. We do not know whether such an agreement exists nor do we consider what effect it might have on the board's plan.

Section 12 of the Public Accountancy Act of 1979, V.T.C.S. art. 41a-1, sets out the requirements for receiving the certificate of a "Certified Public Accountant," which include passing an examination. V.T.C.S. art. 41a-1, §

12(a)(7). Section 15 describes the examination procedure. The board is required to send the exam results to the persons who took the exam not later than the 30th day after the day on which the board receives the results. V.T.C.S. art. 41a-1, § 15(b). Section 15(g) provides as follows:

An applicant who has failed any such examination or reexaminations shall have a right to request a copy of the questions and the answers thereto made by him upon any such examination with the grade clearly shown, and the board shall forthwith comply with such request by delivering by registered or certified mail to such applicant a true copy of the questions and his answers thereto. The board may charge such applicant a reasonable fee therefor, and such request by the candidate must be made within six months after the grades are mailed and not thereafter. (Emphasis added.)

This section entitles an applicant who failed the exam to get "a true copy" of the exam questions and his answer. This right comes into existence only after the exam has been graded and the applicant has received a failing grade. This provision does not give any examinee the right to remove an examination booklet from the examination room immediately after the exam, nor does it give examinees a right to have the booklets sent to them the next day. It does, however, give the examinee who complies with its terms the right to receive a copy of the questions as well as his answers. Thus, it entitles him to a copy of an examination booklet that is the source of exam questions.

Section 15(a) states in part that the "board by rule may adopt a system for the maintenance of the security and integrity of the examination." Rules adopted in accordance with this provision may not limit or repeal the right of a failing examinee to receive a copy of the questions and answers pursuant to section 15(g). An administrative agency may adopt only such rules as are authorized by and consistent with their statutory authority. Texas Fire & Casualty Co. v. Harris County Bail Bond Bd., 684 S.W.2d 177 (Tex. App. [14 Dist.] 1984, writ ref. n.r.e.). It may not adopt rules imposing restrictions that are inconsistent with its statute. Id.

You also ask whether section 15(g) provides a special right of access under the Open Records Act. Section

3(a)(22) of the Open Records Act provides as exception from public disclosure for "test items developed by licensing agencies." V.T.C.S. art. 6252-17a, § 3(a)(22). This open records exception does not change or limit the right of a failing student to receive a copy of the exam questions and his answers pursuant to section 15(g) of article 41a-1, V.T.C.S. See Open Records Decision No. 451 (1986). Section 3(a)(22) would apply to request for exam questions made by members of the public under the Open Records Act.

In summary, when an applicant who has failed his exam makes a request pursuant to section 15(g) of article 41a-1, V.T.C.S., for a copy of the exam questions and his answers, the State Board of Public Accountancy is required by that provision to mail a true copy of the exam questions and his answers to him. The Board is not required by article 41a-1, V.T.C.S. or the Open Records Act, article 6252-17, V.T.C.S. to give copies of examination booklets to persons other than applicants who have failed the exam and who make a request pursuant to section 15(g).

Yours very truly,



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